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Paper No. 10

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In re Application of:  
Preissman  
Application No. 09/828,539  
Filed: April 4, 2001  
Attorney Docket No. 361722000201

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MAY 10 2002

OFFICE OF PETITIONS

DECISION ON  
PETITION

## I. BACKGROUND

This is a decision on the August 30, 2001 petition under 37 C.F.R. §1.10(c) requesting that the above-identified application be accorded a filing date of April 5, 2001, rather than the presently accorded filing date of April 4, 2001.

## II. THE RULE

*37 C.F.R. § 1.10 Filing of correspondence by "Express Mail."*

(a)...

(b)...

(c) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and
- (3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

(d)...

...

#### IV. ANALYSIS

Petitioner alleges that the application was deposited in Express Mail service on April 5, 2001. In support, the petition is accompanied by a copy of Express Mail receipt no. EM056842727US showing a "date in" of April 5, 2001.

However, the application in the file wrapper bears a certificate of mailing that carries the Express Mail label number EM570884806US. Accordingly, the copy of Express Mail label number EM056842727US (the one provided with this petition) is of no relevance to the issue at hand.

#### V. CONCLUSION

In view of the above, *this petition is dismissed*.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.10(c)".

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents  
Box DAC  
Washington, D.C. 20231

By FAX: (703) 308-6916  
Attn: Office of Petitions

By hand: Office of Petitions  
Four Crystal Plaza, Suite 3C23  
2201 South Clark Place  
Arlington, VA 22202

Telephone inquiries concerning this matter may be directed to the undersigned in the Office of Petitions at (703) 306-5593.



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